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BROWN ACT OUTLINE

RALPH M. BROWN ACT OUTLINE

I. Meetings Must be Open and Public

- A. The intent of the Brown Act is to require, with few exceptions, that such agencies handle both their decision-making actions and deliberative processes in open, noticed and public meetings. § 54950
- B. California law requires open and public meetings for local government agencies and the on-going committees and boards they create.

II. Legislative Bodies

- A. The governing body of a local agency. § 54952
- B. Any local body created by state or federal law.
- C. A commission, committee, board or other body created by formal action of a legislative body.
 - 1. Does not matter if it is permanent or temporary.
 - 2. Does not matter if it is decision-making or advisory.
- D. Advisory committees of less than a quorum of legislative body members only are not subject to Brown Act.
 - 1. This exception does not apply to standing committees with continuing subject matter jurisdiction or a meeting schedule fixed by formal action of the legislative body.
- E. A person elected to a legislative body who has not yet assumed the duties of office is a legislative body member subject to the Brown Act.
§ 54952.1

III. Meetings Defined

- A. A congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate on items within their subject matter jurisdiction. § 54952.2

- B. A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. § 54952.2(b)(1)

BUT:

Prohibition of serial meetings shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body. § 54952.2(b)(2)

- C. Gatherings excluded from definition of meeting. § 54952.2

1. Individual contacts or conversations between a member and any other person.
2. Purely social or ceremonial occasions, provided that majority of members do not discuss among themselves business within legislative body's subject matter jurisdiction.
3. Conferences open to the public that involve discussion of issues of general interest to the public or public agencies of the local legislative body's type, provided that majority of members do not discuss among themselves business within legislative body's subject matter jurisdiction other than as part of scheduled program.
4. An open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that majority of members do not discuss among themselves business within legislative body's subject matter jurisdiction other than as part of scheduled program.
5. An open and noticed meeting of another body of the local agency, provided that majority of members do not discuss among themselves business within legislative body's subject matter jurisdiction other than as part of scheduled program.

6. An open and noticed meeting of a legislative body of another local agency, provided that majority of members do not discuss among themselves business within legislative body's subject matter jurisdiction other than as part of scheduled program.
7. An open and noticed meeting of a standing committee of the legislative body, provided that members of the legislative body who are not members of the standing committee attend only as observers.

IV. Regular Meetings

- A. Local legislative bodies required to establish time and place for holding regular meetings. § 54954
- B. Regular meetings must be held within boundaries of territory over which local legislative body has jurisdiction, with a few exceptions.
- C. Agenda must be posted in location freely accessible to public 72 hours before meeting. § 54954.2
 1. Must specify the time and location of the regular meeting.
 2. If requested, the agenda must be provided in "appropriate alternate formats" to the disabled.
 3. The agenda must provide information on how, to whom and when a request for disability related modifications, including auxiliary aids, may be made.
 4. Must provide members of public an opportunity to directly address the local legislative body on matters within their subject matter jurisdiction. § 54954.3
 - (a) Legislative body may adopt reasonable regulations, including limiting total amount of time for public testimony and for each speaker.
 - (b) Legislative body may not prohibit public criticism of policies, procedures, programs, or services of local agency.
 5. Must set forth a brief general description of each item of business to be transacted or discussed. § 54954.2

- (a) Generally need not exceed twenty words.
 - (b) Must be specific enough to give notice to public of the business to be conducted and the decisions to be made.
- D. No action or discussion may be taken on any item not on the posted agenda. § 54954.2
 - 1. Exception: Members of legislative body or staff may briefly respond to statements made by persons giving public testimony.
 - 2. Exception: Members of legislative body or staff may ask a question for clarification, make a brief announcement, or make a brief report on his/her activities.
 - 3. Exception: Member of legislative body or legislative body itself may provide reference to staff, request staff to report back at subsequent meeting, or take action to direct staff to place matter on future agenda.
 - 4. Exception: If there is a need to take immediate action and the need for action came to the attention of the local agency after the agenda was posted, as determined by 2/3 vote of legislative body (unanimous vote if less than 2/3 members present).
- E. Members of public may request copy of agenda or agenda packet be mailed to them – fee may be established. § 54954.1

V. Special Meetings

- A. Requires only 24 hours notice to each member of the legislative body. § 54956
- B. Twenty-four hour notice must also be given to each local newspaper and radio or television station which has requested in writing notice of meetings.
- C. Notice of special meeting.
 - 1. Must specify time and place of special meeting.
 - 2. Must specify business to be transacted or discussed.

3. Must be posted at least 24 hours before special meeting in location freely accessible to public.
- D. Board may not discuss or take action on items not listed on notice.
- E. Members of public must be allowed to address items listed on notice.
- F. Special meetings must be held within boundaries of territory over which local legislative body has jurisdiction, with a few exceptions.

VI. Emergency Meetings

- A. Emergency meetings can be held without 24 hour notice where there is disruption or threatened disruption of public facilities. § 54956.5
 1. An emergency includes work stoppage, crippling activity, other activity that severely impairs, health, safety or both.
 - a. Media and others must be notified one hour before the meeting by telephone.
 2. A dire emergency is a crippling disaster, mass destruction, terrorist act or threatened terrorist activity that poses peril so immediate and significant that providing one hour notice may endanger health, safety or both.
 - a. Media must be notified at or about the same time as board members are notified or as soon after the meeting as possible.
- B. Closed Sessions may be conducted at emergency meetings if two thirds of all members agree or if less than two thirds are present there is unanimous agreement.
- C. Minutes of emergency meetings must include a list of persons notified or for whom notice was attempted, roll call votes and actions taken, and must be posted for ten days as soon after the meeting as possible.

VII. Miscellaneous Procedural Matters

- A. Writings distributed to board members available to public. § 54957.5

1. Must be available at meeting if prepared by local agency and distributed to all members.
 2. Must be made available in "appropriate alternative formats" for the disabled.
 3. Must be available after meeting if prepared by others.
 4. Not available if exempt under Public Records Act.
- B. Open Meetings must comply with the ADA; participants with disabilities cannot be discriminated against due to the disability. § 54953.2
- C. Meetings in facilities prohibited: § 54961
1. If discriminate on basis of race, religion or sex.
 2. If inaccessible to disabled persons.
 3. Where public may not be present without payment or purchase.
- D. Members of public have right to record proceedings (audio or video) if not disruptive. § 54953.5
- E. Broadcast of meeting cannot be prohibited unless disruptive. § 54953.6
- F. Meetings may be held by teleconferencing. § 54953
1. Agendas must be posted at each site, noting all teleconference locations.
 2. Each site must be accessible to public.
 3. Members of public at each site must have opportunity to address legislative body.
 4. Quorum of members must participate from locations within local agency boundaries.
 5. Votes must be by rollcall.

- G. Regular or Special meetings may be adjourned. § 54955
1. Written notice of adjournment must be given in the same way special meeting notice is provided under section 54956.
 2. Within 24 hours adjournment notice must be posted on or near the door where the adjourned meeting was held.
 3. If the meeting was for a hearing, the hearing may be continued in the same manner as stated above. § 54955.1
- H. Clearing of meeting room and continuance in session. § 54957.9
1. If meeting willfully interrupted so orderly conduct unfeasible, and
 2. Order cannot be restored by removal of disruptive individuals.
 3. Media representatives not participating in disturbance may attend meeting.
 4. Only items on agenda may be considered.
- I. May not charge fees for carrying out Brown Act, except as authorized; and no surcharge may be assessed on the disabled (i.e., for preparing alternate format material). § 54956.6; § 54957.5
- J. Adoption of new or increased general tax or assessment. § 54954.6
1. Must publish and mail notice of public meeting and public hearing.
 2. Notice must contain specified tax or assessments information.
 3. Public testimony must be allowed at public meeting prior to public hearing.
 4. Must provide at least 45 days' notice of public hearing.

VIII. Authorized Closed Sessions

- A. Determine whether applicant for license with criminal record is rehabilitated. § 54956.7
- B. Hear charges or complaints from members of local agency health plans providing services to Medi-Cal beneficiaries. § 54956.86
- C. Discuss provider rates and payments for health care service plan governed by a county board of supervisors - exempt for three years. § 54956.87
- D. Governing Board of health plan may consider and take action on matters regarding contracts and contract negotiations with health care providers concerning rates of payment. § 54956.87
- E. Discuss claim for tort or workers' compensation liability by member of an insurance pooling JPA or of the Local Agency Self-Insurance Authority. § 54956.95
- F. Discuss case records of criminal investigation by members of multijurisdictional drug law enforcement agency. § 54957.8
- G. Consider early withdrawal of employee deferred compensation. § 54957.10
- H. Discuss hospital or hospital district trade secrets. Gov't Code § 37606; Health & Safety Code § 32106.
- I. Hold hearings on hospital medical audits or quality assurance committees. Gov't Code § 37624.3; Health & Safety Code § 1461; Health & Safety Code § 32155.
- J. Personnel exception. § 54957
 - 1. Threat to security of public buildings or of essential public services.
 - 2. Threat to public's right of access to public services or public facilities.
 - 3. Consider personnel actions for public employees.
 - a. appointment

- b. employment
 - c. evaluation of performance
 - d. discipline
 - e. dismissal
- 4. Hear complaints or charges brought against employee by another person or employee.
 - a. Employee must be given 24 hours' notice of right to have complaints or charges heard in open session.
 - b. Failure to give notice voids action taken on complaints or charges.
- 5. "Employee" does not include any elected official, member of a legislative body, or independent contractor not functioning as an officer or employee.
- 6. May not discuss or act on proposed compensation, unless resulting from discipline.

K. Conference with labor negotiators. § 54957.6

- 1. Before closed session must hold open session and identify designated representative.
- 2. May meet only with designated representatives.
 - a. to review local agency's position and instruct representative.
 - b. may discuss available funds and funding priorities only for purposes of instructing representative.
 - c. may not include final action on compensation of unrepresented employees
- 3. May discuss salaries, salary schedule, fringe benefits and other matters within scope of representation for represented employees.
- 4. May discuss salaries, salary schedules and fringe benefits for unrepresented employees.

L. Conference with real property negotiators. § 54956.8

1. Before closed session must hold open session and identify:
 - a. its negotiators
 - b. the real property involved
 - c. persons with whom it may negotiate
2. May meet with its negotiator to grant him/her authority in connection with purchase, sale, exchange or lease of real property:
 - a. regarding price
 - b. regarding terms of payment
3. Does not prohibit closed session regarding eminent domain.

M. Pending litigation. § 54956.9

1. Before closed session must state on agenda or publicly announce authorizing subdivision of Section 54956.9.
 - a. If litigation has already been initiated (subdiv. (a)), must:
 - (1) state title of litigation, or
 - (2) otherwise specifically identify litigation, or
 - (3) state that identifying litigation would:
 - (i) jeopardize service of process, or
 - (ii) jeopardize existing settlement negotiations.
2. May hold closed session regarding pending litigation:
 - a. to receive advice from legal counsel
 - b. when open session discussion would prejudice local agency
3. Pending litigation includes:
 - a. existing litigation to which local agency is a party
 - b. based on existing facts and circumstances, there is significant exposure to litigation

- c. legislative body has decided to initiate or is deciding whether to initiate litigation
- d. any adjudicatory proceeding before court, administrative body exercising adjudicatory authority, hearing officer, arbitrator

4. "Existing facts and circumstances" for subdivision (b):

- a. need not disclose those that might result in litigation but are evidently not yet known to plaintiff
- b. must publicly state on agenda or announce those that might result in litigation and are known to plaintiff
- c. written communication threatening litigation or claim under Tort Claims Act must be available for public inspection
- d. statement in public meeting threatening litigation
- e. statement outside public meeting threatening litigation:
 - (1) employee receiving knowledge of threat must make record of statement.
 - (2) record of statement must be available for public inspection.

N. Conference to discuss response to a confidential final draft audit report from the Bureau of State Audits. § 54956.75.

O. Consider the purchase or sale of particular, specific pension fund investments by a legislative body responsible to invest pension funds. § 54956.81.

P. Conference involving a joint powers agency to receive, discuss, and take action concerning information obtained in a closed session of a joint powers agency of which the legislative body is a member. § 54956.96.

IX. Procedure For Holding Closed Session

A. Agenda must contain description of each closed session item. § 54954.2

B. Safe harbor closed session item description. § 54954.5

1. Conference with Real Property Negotiator.

2. Conference with Legal Counsel.
 3. Personnel Matters.
 4. Conference with Labor Negotiators.
 5. Threat to Public Services or Facilities.
 6. Conference Involving a Joint Powers Agency.
 7. Audit by Bureau of State Audits.
- C. Public disclosure of closed session items. § 54957.7
1. Announcement may be made at location of closed session if public may be present.
 2. Announcement may be by reference to items listed on agenda.
- D. Consideration only of matters covered in announcement. § 54957.7
- E. Minute book record of closed sessions. § 54957.2
1. May designate clerk to attend and keep minutes.
 2. Minute book confidential.
- F. Public report of action taken in closed session. § 54957.7
1. Reconvene into open session for disclosures prior to adjournment.
 2. Announcement may be made at location of closed session if public may be present.
- G. Closed Session action and vote to be publicly reported. § 54957.1
1. Agreement concluding real estate negotiations.
 2. Approval of litigation.
 3. Approval of settlement of litigation.

4. Affecting employment status of public employee (if administrative remedies have been exhausted).
5. Agreement concluding labor negotiations.
6. Reports may be oral or in writing.
7. Copies of contracts and settlement agreements finally approved or adopted must be provided upon written request.
8. Substantive amendments requiring retyping require oral summary.
9. All pension fund investment transaction decisions to be reported at the first open meeting after the close of the investment transaction or the transfer of pension fund assets for the investment transaction, whichever occurs first.

X Closed Session Confidentiality; Violations; Remedies & Exceptions § 54963

- A. Information acquired in closed session and related to the basis of the closed session cannot be disclosed.
- B. Violations may be addressed by:
 1. Injunction.
 2. Disciplinary action against an employee if employee has had notice of requirements under this section.
 3. Referral to the grand jury of a member of the legislative body who willfully disclosed confidential information.
- C. It is not a violation of this section:
 1. To make a confidential complaint to the District Attorney or grand jury including disclosing facts regarding the subject of deliberation.
 2. Expressing an opinion concerning the legality of actions taken in closed session.
 3. Disclosing non-confidential information acquired by being present in a closed session. *Note, however, other statutes may identify*

confidential, nondisclosable information which should not be disclosed for reasons not related to the Brown Act.

4. Disclosures under whistleblower statutes are not prohibited.

XI. Brown Act Violations

- A. Misdemeanor to take action in violation of Brown Act where member intends to deprive public of information to which member has reason to know public is entitled. § 54959
- B. DA or interested person may bring lawsuit regarding violations or threatened violations of Brown Act. § 54960
 1. If court finds violation of provisions relating to closed sessions, may order that closed sessions be tape-recorded.
 2. Tapes of closed sessions may be discovered in future actions.
 3. If violations found, court may award costs and attorney fees. § 54960.5
- C. DA or interested person may bring lawsuit for judicial determination that actions taken in violation of provisions requiring agenda item descriptions and open meetings, or regarding regular, special or emergency meetings are null and void. § 54960.1
 1. Before filing action must make timely demand for local agency to cure or correct action.
 2. Even if violation of agenda item description or open meeting requirements found, action not void if:
 - a. substantial compliance.
 - b. involves sale or issuance of notes, bonds or evidence of indebtedness.
 - c. results in some contractual obligations.
 - d. involves collection of tax.
 - e. person had actual timely notice of matter improperly noticed.
 3. If violation found, court may award costs and attorney fees. § 54960.5

**THE RALPH M. BROWN ACT
GOVERNMENT CODE SECTIONS
54950 THROUGH 54963**

<http://www.leginfo.ca.gov/calaw.html>

POWERPOINT SLIDE PRESENTATION